

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 3184 of 2002

Order:

Pursuant to notification in Rc. No. R1/3818/99, dated 27.03.1999, issued by respondent No.1-A.P. Social Welfare Residential Educational Institutions Society, in newspapers inviting applications for filling up the posts of Principal, the petitioner submitted her application. The petitioner having satisfied the eligibility criteria, was called for written test by respondent No.1. Based on her performance in the written test, respondent No.1 called the petitioner for interview. The petitioner attended the interview before respondent No.1. However, her result was not declared. When the respondents neither declared her result nor appointed her as Principal, the petitioner filed the present writ petition *inter alia* seeking a direction to the respondents to release the selection list and appoint her as Principal based on her performance.

This Court while admitting the writ petition directed the respondents to declare the result of the petitioner. In pursuance of the said directions, the respondents declared the result of the selection. The petitioner was selected. However, the respondents did not issue appointment orders appointing her as Principal. Therefore the petitioner, filed a petition in W.P.M.P. No. 1950 of 2005, seeking to amend the prayer in the writ petition, which is to the following effect:

To issue a writ, order or direction more particularly one in the nature of a writ of Mandamus declaring the action of the respondents in not appointing the petitioner as Principal despite her getting highest marks in the written test and interview held pursuant to the Notification No. R1/3818/99, dated 27.03.1999 of respondent No.1 as arbitrary and illegal and consequently direct the respondents to appoint the petitioner as Principal with effect from the date when others were given the appointment letters i.e. 15.07.1999 with all consequential benefits, and pass such other order or orders as this Hon'ble Court deem fit and proper.

Having regard to the averments made in the affidavit filed in

support of the petition, the W.P.M.P. seeking amendment of the prayer in the writ petition is ordered, and the petitioner is permitted to amend the prayer in the writ petition to the above effect.

The learned counsel for the petitioner submitted the petitioner performed well in the written test as well the interview conducted by the respondents for appointment to the post of Principal, and this is evident from the additional-counter filed by respondent No.1, which shows that the petitioner having scored 44.12 marks is placed at Sl. No. 5 in the select list. He submitted that though the petitioner was placed at Sl. No. 5 in the select list, the respondents without issuing appointment order to her, have issued appointment orders to candidates, who got less marks than the petitioner and were placed below the petitioner in the select list at serial Nos. 6 and 7. He submitted that this action of the respondents in issuing appointment orders to persons, who got less marks than the petitioner, and not giving appointment order to the petitioner, who got more marks than others, who were issued appointment orders, is not only discriminatory, but is illegal and arbitrary.

The learned Standing Counsel for respondent No.1 and the learned Government Pleader for Social Welfare for respondent No.2 submitted that in pursuance of the interim directions of this Court, the respondents declared the results of the selection, and having regard to the prayer sought by the petitioner in the main writ petition, which is only to declare the results, nothing survives for adjudication. They submitted that the petitioner having secured 44.12 marks, though was placed at Sl. No. 5 in the select list, but having regard to her poor past track record, the respondents did not issue appointment order to her. They submitted that the petitioner cannot claim appointment as a matter of right, and that mere inclusion of her name in the select list does not confer any right upon her to be issued appointment orders, even if some vacancies remain unfilled. In support of this submission,

they placed strong reliance on the judgment of the apex Court in **State of U.P. v. Rajkumar Sharma**^[1], and prayed that the writ petition be dismissed.

Having heard the learned counsel for the petitioner, the learned Standing Counsel for respondent No.1 and the learned Government Pleader for Social Welfare for respondent No.2, I have perused the record produced, relating to the impugned selection, produced by the respondents.

The contention of the respondents that in view of the declaration of result of the petitioner, nothing survives for adjudication in the main writ petition, is devoid of merit. In the main writ petition, the petitioner, apart from seeking a direction to the respondents to declare her result, has also prayed for issuance of a direction to the respondents to appoint her, based on her performance. While admitting the writ petition, this Court granted interim directions, and in pursuance of the said interim directions, the respondents declared the results, and the petitioner's name was found in the select list. The petitioner having secured 44.12 marks, was selected and placed at Sl. No.5 in the select list. Inasmuch as the performance of the petitioner is over and above the other selected candidates, who were issued appointment orders, the petitioner is entitled to seek grant of the second relief prayed in the writ petition, namely to appoint her as Principal, based on her performance. Be that as it may, in view of the petition in W.P.M.P. No.1950 of 2005, filed by the petitioner, seeking amendment of the prayer in the writ petition, which was ordered, the respondents cannot be allowed to contend that in view of the declaration of results, nothing survives for adjudication in the writ petition.

A perusal of the record, relating to the impugned selection produced by the respondents, would disclose that pursuant to the recruitment notification, issued by respondent No.1, for filling up of 25

posts of Principals – (10 for men and 15 for women), about 219 applications were received, of which 80 were found eligible. Respondent No.1 called the candidates found eligible for the written test, which was held on 19th and 20th May, 1999. The answer sheets of the candidates, who appeared for the written test, were evaluated by SCERT. About 55 candidates, who scored more than 35 marks, which were fixed as the cut off marks for passing the written test, were called for interview.

The Selection Committee, comprising of the Principal Secretary to Government & Chairman, APSWREI Society, Dean in the Faculty of Education, Osmania University, Director, SCERT, Deputy Commissioner (Retd.), Navodaya Vidyalaya Samithi and Secretary, APSWREI Society, constituted by the respondents, conducted the interviews. The Selection Committee assessed the performance of the candidates for a cumulative of 100 marks, of which 50 marks were fixed for written test, 35 marks for past track record and 15 marks for interview. The weightages of 35 marks fixed for past track record and interview were further sub-divided under various heads as follows:

(i) Five marks for distinction in PG/M.Phil/P.hd., (ii) Five marks for publications or awards, if any, (iii) Five marks for experience as Principal/Head Master or Experience as SPGT/JL (Minimum experience for the post prescribed is 10 years, above this limit candidates will be awarded one mark for every additional year of experience), (iv) Ten marks for performance as Principal/Head Master or PGT/JL i.e. percentage passes for the past three years (100% passes will be awarded maximum ten marks, 100-80% eight marks, 70%-80% six marks, 60%-70% four marks and 50%-60% two marks), (v) Five marks for personal interest in extra curricular activities, such as literature, music, sports etc., and (vi) Five marks for participation/organizing any major events, such as conducting science exhibition, workshops, seminars etc., in the institution.

Applying the above criteria, for past track record, the Selection Committee, screened and selected 10 male candidates for ten vacancies and eight women candidates for 15 vacancies, which includes the petitioner.

The statement showing the final marks obtained by the candidates in the written exam, track record and interview, shows that

the petitioner was awarded 22.12 marks as against 50 marks fixed for written test, 10 marks as against 25 marks fixed for track record, twelve marks against 25 marks, which is inclusive of weightages worked out by the interive Board and marks allotted for interview. Thus, the petitioner in all was awarded 44.12 marks, and was placed at Sl. No. 5 in the select list.

It is the contention of the respondents that as the track record of the petitioner is not satisfactory, despite her securing more marks, she was not issued appointment orders. A perusal of the record would show that the Selection Committee has verified the past track record, namely the disciplinary cases pending or previous punishments awarded to the selected candidates. Upon verification of the past track record of the petitioner, it recorded that the petitioner is said to have been highly irregular in attending to her duties by the Principal of APSWR School for Girls, Pochampadu and also irresponsible in performing her duties, that her academic performance for the Inter class results, during her appointment at the previous school at Dharmavaram, was also found to be highly unsatisfactory during the year 1996-97, that in September, 1997 she is said to have provoked the students and staff and created problems in the school, and that the Principal, Dharmavaram, was directed by the Secretary to surrender her to the Society's Office, and that she was then posted to Pochampadu on 08.10.1997. Though the Selection Committee made the afore-said recordings, yet it awarded ten marks. However, the Selection Committee recommended non-consideration of the case of the petitioner for selection as a regular Principal.

The Selection Committee, upon judging the past track record of the petitioner as per criteria fixed, has awarded ten marks against 25 marks fixed for track record, which is over and above the marks awarded to some of the selected candidates. It is seen from the record that the Selection Committee has awarded three marks and eight

marks towards past track record to some of the selected candidates, who were issued appointment orders. This itself shows that the petitioner's track record is far better than other selected candidates. Though the petitioner was awarded 10 marks, which is over and above the marks awarded to the other selected candidates, yet the respondents for the reasons best known to them, denied appointment orders to the petitioner. The stand taken by the respondents that since the track record of the petitioner is not satisfactory, the Selection Committee has not recommended her case for appointment as regular Principal, goes contrary to their very record, which shows that the petitioner was awarded more marks than other selected candidates who were issued appointment orders. The Selection Committee having awarded ten marks to the petitioner towards past track record, there is no justification either for the Selection Committee or for the respondents to deny consideration of the case of the petitioner for appointment as regular Principal on the ground that her track record is unsatisfactory. Had not the Selection Committee not awarded any marks to the petitioner for track record, then the respondents would have been justified in contending that as no marks were awarded to the petitioner for past track record, she was not issued appointment orders. At any rate, the respondents while selecting the candidates, have adopted the cumulative effect of the marks secured by the candidates, and those who secured highest marks, were selected in the order of merit. It is not the case of the respondents that under each of the heads fixed for awarding marks, namely written test, past track record and interview, the candidates are required to secure a minimum number of marks, and non-awarding of marks under any of those heads, would entail non-consideration of their case for appointment. The petitioner having been awarded 22.12 marks for written test, ten marks for track record and eight marks for interview, was awarded in

all 44.12 marks, and was placed at Sl. No.5 in the select list. The petitioner having been awarded marks under all the heads fixed for selection, and the marks awarded to her being over and above other selected candidates, namely those placed at Sl. Nos. 6 and 7, who were issued appointment orders, the action of the respondents in denying appointment to the petitioner, is not only discriminatory, but is also highly unjustified.

The respondents except contending that since the track record of the petitioner is not satisfactory, they did not issue appointment orders to the petitioner, have not placed any material before this Court to justify their stand. The record produced by the respondents, does not contain the file relating to the disciplinary proceedings that are pending against the petitioner nor the punishments that were awarded to her previously. The fact that the Selection Committee has awarded ten marks to the petitioner as against 25 marks fixed for track record, itself is an indicia that the Selection Committee was satisfied with her track record. In the absence of any material produced to show that there are disciplinary cases pending against the petitioner and that she was visited with punishments previously, the action of the respondents in denying appointment orders to the petitioner, cannot be justified, and more so when the petitioner secured more marks than other selected candidates, who were issued appointment orders.

There can be no quarrel on the proposition of law and the judgment relied upon by the respondents of the apex Court in **State of U.P. v. Rajkumar Sharma**^[2], in support of their contention that though the petitioner is one of the selected candidates, yet she cannot claim appointment as a matter of right and that mere inclusion of her name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. In the case on hand, the petitioner is not seeking appointment order as a matter of right. She has pleaded

discrimination on the ground that the respondents had issued appointment orders to candidates who secured less marks than her, while they denied appointment to her. The fact that the petitioner was discriminated, is glaringly evident from the record produced by the respondents and the facts as narrated above, which disclose that the Selection Committee despite awarding ten marks to the petitioner for track record, which is more than the marks awarded to other candidates, who were issued appointment orders, yet had denied appointment orders to the petitioner. This action of the respondents in issuing appointment orders to candidates who secured less marks while denying appointment orders to candidates who secured more marks, is not only discriminatory, but also arbitrary and illegal, and more so when the respondents failed to justify their grounds for denial of appointment orders to the petitioner. In that view of the matter, reliance placed by the learned counsel for the respondents on the afore-said judgment of the apex Court, is of no avail to him.

For the foregoing reasons, the writ petition is allowed. The respondents shall issue appointment orders, appointing the petitioner as Principal from the date when other selected candidates were issued appointment orders. No costs.

N.V. RAMANA, J.

Date: 9th June, 2006.
KSR

[\[1\]](#) (2006) 3 SCC 330

[\[2\]](#) (2006) 3 SCC 330